

NO. 83-1349

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

MAGNISEA FISHERIES, INC.,
a California corporation,

Petitioner,

vs.

OREGON OYSTER COMPANY,
an Oregon corporation,

Respondent.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WILLIAM J. CURRER, JR.
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Counsel for Respondent
Oregon Oyster Company

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RESTATEMENT OF ISSUES

Issue One.

Where in the complaint and all proceedings plaintiff made clear that the only claim it made against defendant Oregon Oyster Company was for a breach of contract for \$9,600 and no more, and separately claimed against two other defendants but not against defendant Oregon Oyster Company two tort counts (conversion and issue of NFS checks), and for one of those counts sought to satisfy the jurisdictional minimum by claiming punitive damages against the other two defendants only but not against defendant Oregon Oyster Company, and at the hearing on a default judgment against the two defendants with respect to whom alone plaintiff sought punitive damages, which the trial court rejected, has the jurisdictional minimum of \$10,000 been reached in a diversity case.

Issue Two.

Should this Court review a determination that the jurisdictional minimum of \$10,000 had not

been reached in a diversity case where there is no dispute that the amount involved is only \$9,600, a sum solely within the jurisdiction of the lower court (Municipal Court of Los Angeles), within the County of Los Angeles.

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OPPOSITION TO PETITION FOR WRIT OF CERTIORARI
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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE
JUSTICES OF THE UNITED STATES OF AMERICA:
Respondent Oregon Oyster Company
(hereafter "Oregon Oyster") opposes the

Petition for a Writ of Certiorari of Magnisea
Fisheries, Inc., and urges its denial as
follows:

I

PUBLIC POLICY DEMANDS REJECTION
OF THE PETITION

At a time when the United States District Courts are overburdened and understaffed, petitioner seeks to have this Court review a decision of the United States Court of Appeals for the Ninth Circuit in which it held that the minimum jurisdictional amount of \$10,000 had not been reached as to this respondent by the pretext of punitive damages against two other defendants on facts not connected with any transaction or activity of respondent. The trial court also rejected the idea of punitive damages in this case. Thus, in effect petitioner argues that this Court should hear and reverse the Court of Appeals in order to reduce the United States District Court to a justice of the peace

court. We note that the Court of Appeals for the Ninth Circuit did not consider this argument and this problem of sufficient merit to direct publication of the Opinion, and on the contrary, directed that it be not published. The mere statement of petitioner's argument for a writ of certiorari shows that it should be summarily denied.

II

THERE COULD BE NO PENDENT JURISDICTION

For pendent jurisdiction to exist by joinder of parties defendant, there must be facts establishing liability which are common to all defendants, even though the amount of liability as to some may differ. Here, the record shows conclusively that the activities for which plaintiff sought punitive damages and thereby brought himself as to the two defendants not before this Court within the \$10,000 minimum, had nothing to do with the activities, conduct or facts involving respondent. Plaintiff sold shrimp to one,

Setina, who in turn sold it to respondent. Plaintiff sought to make it appear that the contract was directly between plaintiff and respondent, which was not true and the proceedings on summary judgment show that that is the case. The matters with respect to which plaintiff sought punitive damages against the two defendants not before the Court involved matters subsequent to the delivery of the shrimp to Oregon Oyster as between Setina and plaintiff only and with respect to which respondent was not connected and had no knowledge. Plaintiff's efforts to bootstrap itself into federal jurisdiction is a travesty on the limitations on that jurisdiction in a diversity case.

III

THERE IS NO CONFLICT AMONG THE CIR

The matter of multiple defendants or multiple plaintiffs is one which reaches into the question of whether or not the facts concerning liability are the same. The Court

of Appeals for the Ninth Circuit follows established principles and did in this case.

In Libby, McNeill, and Libby v. City Nat. Bank, 592 F.2d 504, 510 (CCA 9, 1978), the Court states:

"Nor may these claims be aggregated with the others so as to come within the amount in controversy requirement. As we have stated, the tests for aggregating claims of one plaintiff against multiple defendants and of multiple plaintiffs against one defendant are 'essentially the same . . . : the plaintiff's claims against the defendants must be common and undivided so that the defendants' liability is joint and not several.'"

United States v. S. Pac. Transp. Co., 543 F.2d 676, 683 n. 9 (9th Cir. 1976); see Aetna Cas. & Sur. Co. v. Graves, 381 F.Supp. 1159, 1162-63 (W.D.La. 1974); 14 C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 3704, at 414-17

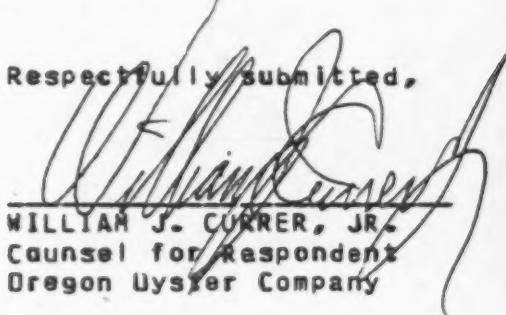
(1976)."

IV

CONCLUSION

The Petition for Writ should be
summarily rejected.

Respectfully submitted,


WILLIAM J. CURRER, JR.
Counsel for Respondent
Oregon Oyster Company

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PROOF OF SERVICE BY MAIL

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PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES.) SS

WILLIAM J. CURRER, JR., certifies
and declares under the penalties of perjury
that the following is true and correct:

"I am a citizen of the United States
and a resident of the County of Los Angeles.
I am over the age of eighteen years and not a

party to the within and above entitled matter.
My business address is 417 South Hill Street,
Los Angeles, California 90013.

On the 9th day of March, 1984, I served the OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT on the petitioner to said action by placing three copies thereof in an envelope addressed to counsel of record for the said petitioner at the office address of said counsel, as follows:

Mitchell N. Reinis, Esq.
Reinis and Fink
8500 Wilshire Boulevard
Suite 820
Beverly Hills, California 90211

I then sealed the envelope addressed to the said counsel for the said petitioner and deposited the same with postage fully prepaid thereon in the United States mail at Los Angeles, California, where is located the office of counsel for the person by and for whom said service was made.

There is delivery service by United States mail at the place so addressed and there is regular communication by mail between the place of mailing and the place so addressed.

Dated and executed at Los Angeles, California, this 9th day of March, 1984.

Lillian Burns
Declarant